



## **BOARD OF SUPERVISORS AGENDA ITEM REPORT**

### **CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: May 7, 2019

*\* = Mandatory, information must be provided*

or Procurement Director Award ☐

**\*Contractor/Vendor Name/Grantor (DBA):**

ATC Sequoia, LLC, a Delaware Limited Liability Company ("ATC").

**\*Project Title/Description:**

Agreement to Purchase Communications Easement; E-0112; Supervisor District 3.

**\*Purpose:**

On March 5, 2019, the Board of Supervisors approved the sale of an exclusive communications easement and a non-exclusive access and utility easement (collectively the "Easements"), both for fifty (50) years and over property at Rillito Regional Park ("Rillito Park"). The communications easement is over property consisting of a 30'x40' area for an equipment shelter and 10'x10' area for a monopalm. The existing tower lease will be assigned to ATC. The total purchase price for the Easements will be deposited in a Special Revenue Fund to be administered by the Natural Resources, Parks and Recreation Department ("NRPR") for the benefit of the Park.

**\*Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020.

**\*Program Goals/Predicted Outcomes:**

The auction was held on April 10, 2019, and the high bidder was ATC, which bid \$365,000.00.

**\*Public Benefit:**

The sale proceeds will be used for the direct benefit of Rillito Park. The cellular communications facility at Rillito Park will continue to provide enhanced cell phone capacity to Verizon customers in Pima County.

**\*Metrics Available to Measure Performance:**

The purchase price is 90% of the appraised value.

**\*Retroactive:**

No.

*To: COB - 4-23-19  
Ver. - 1  
Pgs - 25  
(11)*

**Contract / Award Information**

Document Type: CTN Department Code: PW Contract Number (i.e., 15-123): 19\*0184  
Effective Date: 5/7/2019 Termination Date: 5/6/2069 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☐ Expense Amount: \$\* \_\_\_\_\_ ☒ Revenue Amount: \$ 365,000.00

**\*Funding Source(s) required:**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

**If Yes, is the Contract to a vendor or subrecipient?**

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

*If Yes, attach Risk's approval.*

Vendor is using a Social Security Number? ☐ Yes ☒ No

*If Yes, attach the required form per Administrative Procedure 22-73.*

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
Prior Contract No. (Synergen/CMS): \_\_\_\_\_  
☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ \_\_\_\_\_  
Is there revenue included? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_

**\*Funding Source(s) required:**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information** (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_  
Effective Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_  
☐ Match Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_

**\*All Funding Source(s) required:**

\*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**\*Funding Source:** \_\_\_\_\_

**\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?** \_\_\_\_\_

Contact: Michael D. Stofko

Department: Real Property Services

Telephone: 520-724-6667

Department Director Signature/Date: \_\_\_\_\_

Deputy County Administrator Signature/Date: \_\_\_\_\_

County Administrator Signature/Date: \_\_\_\_\_

*(Required for Board Agenda/Addendum Items)*

**PIMA COUNTY REAL PROPERTY SERVICES**

**SELLER: Pima County**

**PURCHASER: ATC Sequoia LLC**

**REVENUE: \$365,000.00**

CONTRACT	
NO.	<u>CTN- PW- 19-184</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

**AGREEMENT TO PURCHASE COMMUNICATIONS EASEMENT**

THIS AGREEMENT TO PURCHASE COMMUNICATIONS EASEMENT (this "**Agreement**") is made effective as of the latter signature date hereof (the "**Effective Date**") by and between **ATC Sequoia LLC**, a Delaware limited liability company ("**Buyer**") and **Pima County**, a political subdivision of the State of Arizona ("**Seller**") (Buyer and Seller being collectively referred to herein as the "**Parties**"). In consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Sale; Term. Subject to the terms and conditions set forth herein, Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, an exclusive communications easement and a non-exclusive access and utility easement (collectively, the "**Easements**"), each for a term of fifty (50) years, which Easements shall be memorialized in an easement agreement in the form of **Exhibit A** and incorporated herein by reference (the "**Easement Agreement**"). The Easement Agreement shall grant, convey, and transfer to Buyer certain rights as described in the Easement Agreement over, across, in, and under portions of that certain real property owned by Seller in the County of Pima, State of Arizona (the "**Premises**") described in **Exhibit B**. The portion of the Premises over which the Easement Agreement will grant an exclusive easement (the "**Exclusive Easement Area**") is described in **Exhibit C**. The portion of the Premises over which the Easement Agreement will grant a non-exclusive access and utility easement (the "**Access and Utility Easement Area**") is described in **Exhibit D**.

2. Assignment of Existing Agreement. Buyer currently operates or manages a communications facility in the Exclusive Easement Area pursuant to the lease agreement described below (the "**Current Agreement**"):

That certain Lease for Wireless Communications Facilities dated March 8, 2005 by and between Pima County and Alltel Communications of the South West Limited Partnership as amended by that certain First Amendment to Lease dated July 10, 2012 ; as amended by that certain Second Amendment to Lease dated June 18, 2013; as amended by that certain Third Amendment to Lease dated February 10, 2015; as

amended by that certain Fourth Amendment to Lease dated August 11, 2015; as amended by that certain Fifth Amendment to Lease dated January 02, 2018.

For reference see Notice of Lease recorded on November 16, 2007 in Book 13183, Page 2324 as Sequence Number 20072220534 with the Pima County, Arizona, Recorder and assigned contract number #04-14-A-140419-0305.

Seller shall assign to Buyer, or an affiliate of Buyer, all of Seller's right, title and interest in, to and under the Current Agreement, including without limitation, the right to receive any and all rents and other monies payable to Seller thereunder, arising or accruing on or after the Closing (as herein defined). Seller represents that there are no other existing leases, licenses, or other agreements for use and occupancy of the Exclusive Easement Area. Seller hereby represents and warrants that it has the full power and authority to enter into this Agreement and the person(s) executing this Agreement on behalf of Seller, as the case may be, have the authority to enter into and deliver this Agreement on behalf of Seller.

3. Purchase Price. Subject to the terms of this Agreement, Buyer shall pay to Seller an amount equal to **Three Hundred Sixty Five Thousand and No/100 Dollars (\$365,000.00)** [the "**Purchase Price**"] by check or by wire transfer of funds. The day on which payment is made to Seller is referred to herein as the "**Closing**". Buyer shall have the right to deduct from the Purchase Price, on a prorated basis, any prepaid monthly and/or annual rental payments made pursuant to the Current Agreement, which are attributable to the period subsequent to the first day of the next calendar month following the date of Closing. Seller agrees to accept the Purchase Price as full and final compensation for conveying the Easements to Buyer. All proceeds from the sale will be deposited by Seller into a special revenue fund held by Pima County Natural Resources, Parks and Recreation for the benefit of Rillito Regional Park.

4. Closing. The Parties shall use best efforts to close the transaction contemplated herein within ninety (90) days of the Effective Date. Unless otherwise agreed to in writing by the Parties, this Agreement shall automatically terminate upon the 180<sup>th</sup> day following the Effective Date if the Closing has not occurred (said date being referred to herein as the "**Termination Date**"). Between the Effective Date and the Termination Date, Buyer and its agents, employees, contractors, and designees may hereafter enter the Premises for the purposes of inspecting, surveying or otherwise evaluating the Exclusive Easement Area and the Access and Utility Easement Area without any ground disturbance. Seller shall provide Buyer with any reasonable documentation requested by Buyer to facilitate payment to Seller or to otherwise assist in expediting Buyer's completion of its due diligence. If all or any portion of the Premises is encumbered by a mortgage or other security instrument, Seller agrees to obtain a Non-Disturbance Agreement ("**NDA**") from the applicable lender(s) on a form to be provided by Buyer.

5. Conditions to Closing. Buyer's performance of its obligations under this Agreement are contingent upon Buyer's determination prior to the Closing, in Buyer's sole and absolute discretion, that: (i) Seller's title to the Premises and its rights under the Current Agreement are properly vested and free of all claims, liens and encumbrances of any kind or nature; (ii) a survey does not reveal any issues that would prevent or hinder Buyer's intended use of the Easements; and (iii) the Easements and the financial transaction contemplated herein is satisfactory to Buyer. If Buyer desires to terminate this Agreement because of the failure of any condition precedent set forth, then Buyer shall notify Seller in writing of such termination on or prior to Closing and shall return any escrowed documents to Seller or destroy the same. Buyer's due diligence, including any survey, shall be at Buyer's expense.

6. Delivery at Closing. Seller shall execute and deliver to Buyer the Easement Agreement, together with any other documents reasonably necessary for Buyer to record the Easement Agreement with the appropriate recorder's office and to obtain title insurance. In the event Seller executes and delivers the Easement Agreement to Buyer prior to Closing, said documents shall be held in escrow by Buyer until the earlier of Closing or termination of this Agreement as provided hereunder.

7. No Buyer Representations. Seller hereby acknowledges and agrees that Buyer has not made any representations or warranties to Seller, including, without limitation, the tax implications of the contemplated transaction, and the Parties further agree that all terms and conditions of the Agreement are expressly stated herein.

8. Exhibits. The following Exhibits are fully incorporated herein as if set forth at length. To the extent that any Exhibits to this Agreement are not available at the execution thereof, they will be added by the Parties prior to Closing and will be in form and substance reasonably satisfactory to the Parties.

<b><u>Exhibit A</u></b>	<b>Form of Easement Agreement</b>
<b><u>Exhibit B</u></b>	<b>Premises</b>
<b><u>Exhibit C</u></b>	<b>Exclusive Easement Area</b>
<b><u>Exhibit D</u></b>	<b>Access and Utility Easement Area</b>

9. Miscellaneous.

9.1. This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this

Agreement by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Agreement by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Agreement by all Parties to the same extent as an original signature.

9.2. This Agreement shall be governed and construed by the laws of the State of Arizona without regard to the conflicts of laws provisions of the State of Arizona. Buyer may assign its rights, title, and interest in and to this Agreement to an affiliate or subsidiary of Buyer without the consent or approval of (or notice to) Seller.

9.3. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein:

To Seller at:	Pima County Natural Resources Parks & Recreation Department 3500 West River Road Tucson, AZ 85741;
With copy to:	Pima County Real Property 201 N. Stone Ave., 6th Floor Tucson, AZ 85701
To Buyer at:	Attn: Land Management 10 Presidential Way Woburn, MA 01801
With copy to:	Attn: Legal Dept. 116 Huntington Avenue Boston, MA 02116.

Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

**BUYER:**

**ATC Sequoia LLC,**

a Delaware limited liability company

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Carol Maxine*  
*Carol Maxine*  
*Senior Counsel - IS Tower*  
*3/6/19*

**SELLER:**

**Pima County, a body politic and corporate of the State of Arizona:**

\_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Julie Castaneda, Clerk of Board

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

 4/15/19  
Carmine DeBonis, Deputy County Administrator for Public Works

  
Neil J. Konigsberg, Manager, Real Property Services

APPROVED AS TO FORM:

  
Kell Olson, Deputy County Attorney, Civil Division



## **EXHIBIT A**

### **To Agreement to Purchase Communications Easement**

#### ***Prepared by and Return to:***

Attorney Ian P. Fitzgerald, Land Management  
Site No: 418747  
Site Name: AZTU\_Mall AZ  
c/o American Tower  
10 Presidential Way  
Woburn, MA 01801

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(Recorder's Use Above this Line)

**STATE OF ARIZONA**

**A Portion of Assessor's Parcel No.: 108-19-004A**

**COUNTY OF PIMA**

#### **EASEMENT AND ASSIGNMENT AGREEMENT**

This Easement Agreement ("**Agreement**") dated as of \_\_\_\_\_, 201\_ (the "**Effective Date**"), by and between **Pima County**, a political subdivision of the State of Arizona ("**Grantor**") and **ATC Sequoia LLC**, a Delaware limited liability company ("**Grantee**").

#### **BACKGROUND**

Grantor is the owner of the real property described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "**Premises**"). Grantor desires to grant to Grantee certain easement rights with respect to portions of the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement.

#### **AGREEMENTS**

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easements. Grantor, for itself and its successors and assigns, hereby grants, bargains, sells, transfers and conveys to Grantee, its successors and/or assigns: (i) an exclusive easement (the "**Exclusive Easement**") in and to that portion of the Premises more particularly described on **Exhibit "B"** attached hereto and by this reference made a part hereof (the "**Exclusive Easement Area**"); and (ii) a non-exclusive easement (the "**Access and Utility**").

**Easement**"; the Exclusive Easement and Access and Utility Easement, collectively, the **"Easements"**) in and to that portion of the Premises more particularly described on **Exhibit "C"** attached hereto and by this reference made a part hereof (the **"Access and Utility Easement Area"**; the Access and Utility Easement Area and Exclusive Easement Area, collectively, the **"Easement Areas"**). The Easement Areas shall be used for the purposes set forth herein and shall expressly include that portion of the Premises upon which any of Grantee's fixtures, structures, equipment or other personal property are located as of the date of this Agreement.

2. Private Easement. Nothing in this Agreement shall be deemed to be a dedication of any portion of the Easement Areas for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.

3. Successors Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming any interest under them.

4. Duration. The duration of this Agreement and the Easements granted herein (the **"Term"**) shall be fifty (50) years, unless Grantee provides written, recordable notice of Grantee's intent to terminate this Agreement and the Easements described herein, in which event this Agreement, the Easements, and all obligations of the parties hereunder shall terminate upon Grantee's recordation of any such notice. For the avoidance of doubt, Grantee may, in its sole and absolute discretion, unilaterally terminate this Agreement, the Easements, and all of Grantee's obligations hereunder, except those expressly set forth in this Agreement, without the approval of or consent of Grantor as provided in the immediately preceding sentence.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneously with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term, and all consideration received by Grantor shall be nonrefundable, regardless of any termination by Grantee

6. Use of Easement Areas.

a. Exclusive Easement. The Exclusive Easement Area may be used by Grantee and any of its affiliates, customers, tenants, subtenants, lessees, licensees, successors, and/or assigns together with any of the employees, contractors, consultants, and/or agents of the foregoing (collectively, the **"Permitted Parties"**) for the purposes of installing, constructing, maintaining, operating, modifying, repairing and/or replacing improvements, equipment, structures, fixtures, antennae and other personal property as Grantee may deem necessary or appropriate, which may be located on or in the Exclusive Easement Area from time to time, for the facilitation of communications and other related uses (the **"Permitted Use"**). Any such

property, including any equipment, structures, fixtures and other personal property currently on or in the Exclusive Easement Area, shall not be deemed to be part of the Premises, but instead shall remain the property of Grantee or the applicable Permitted Parties. At any time during the Term and at any time within 180 days after the termination of this Agreement, Grantee and/or any applicable Permitted Parties may remove their equipment, structures, fixtures and other personal property from the Easement Areas. Grantee may make, without the consent or approval of Grantor, any improvements, alterations or modifications to the Exclusive Easement Area as are deemed appropriate by Grantee, in its sole and absolute discretion, provided Grantee obtains all necessary governmental permits and approvals, including building permits, in compliance with applicable laws, rules and regulations. Grantee shall have the unrestricted and exclusive right, exercisable without the consent or approval of Grantor, to lease, sublease, license, or sublicense any portion of the Exclusive Easement Area, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement Area for any reason and shall not disturb Grantee's nor any Permitted Parties' right to use the Exclusive Easement Area in any manner, except to exercise its right to relocate the Easement Areas (as defined below) as provided in Section 7 of this Agreement. Grantee may, at Grantee's sole and exclusive option, construct a fence around all or any part of the Exclusive Easement Area and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement Area, provided that in the event of an emergency, Grantor will have reasonable access to the Exclusive Easement Area upon notice to Grantee.

b. Access and Utility Easement. The Access and Utility Easement shall be used by Grantee and the Permitted Parties for pedestrian and vehicular (including trucks) ingress and egress to and from the Exclusive Easement Area at all times during the Term on a seven (7) days per week, twenty-four (24) hours per day basis. Grantee shall have the non-exclusive right to construct, reconstruct, add, install, improve, enlarge, operate, maintain and remove overhead and underground utilities, including, without limitation, electric, fiber, water, gas, sewer, telephone, and data transmission lines (including wires, poles, guys, cables, conduits and appurtenant equipment) in, on, or under the Access and Utility Easement Area in order to connect the same to utility lines located in a publicly dedicated right of way. Grantee shall use best efforts to provide forty-eight (48) hours advanced telephonic notice of any such construction, improvement, or maintenance within the Access and Utility Easement Area to the Deputy Director of Pima County Natural Resources, Parks and Recreation at **520-724-5000**, to determine and avoid conflicts with park events where reasonably possible. Grantor shall not otherwise prevent, disturb, and/or limit access to the Access and Utility Easement Area or use of the Access and Utility Easement by Grantee or any of the Permitted Parties, and Grantor shall not utilize the Access and Utility Easement Area in any manner that interferes with Grantee's or any of the Permitted Parties' use of such area as expressly provided herein. Grantor agrees to maintain the existing access road in a manner sufficient to allow pedestrian and vehicular access to the Exclusive Easement Area at all times except that Grantee shall be

responsible for repairing any damage caused by the use of the road by Grantee and/or the Permitted Parties, reasonable wear and tear excepted. In the event the Access and Utility Easement Area cannot, does not, or will not fully accommodate the access and utility needs of the Grantee during the Term, or if it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement Area are not encompassed within the description of the Access and Utility Easement Area as set forth herein, Grantor and Grantee agree to amend the description of the Access and Utility Easement Area provided herein to include the description of such areas and/or to relocate the Access and Utility Easement, and to create a revised legal description for the Access and Utility Easement Area that will reflect such relocation. Any costs incurred in connection with creating a revised legal description of the Access and Utility Easement will be shared equally by the parties, except that each party shall pay its own attorney's fees. The Access and Utility Easement and the rights granted herein with respect to the same shall be assignable by Grantee to any public or private utility company to further effect this provision without the consent or approval of Grantor.

7. Relocation of Easement Areas.

Commencing on March 8, 2020, Grantor shall have the right to relocate the Easement Areas once every ten (10) year period during the Term at Grantor's sole expense, including but not limited to reimbursement of any reasonable internal expenses incurred by the Grantee as the result of such relocation, including all associated documented expenses including customer expenses and relocation of access and utilities. Grantor shall notify Grantee in writing of its intent to relocate the Exclusive Easement Area at least two (2) years prior to the date of such relocation, and shall deliver to Grantee with such notice a copy of a survey and legal description depicting the proposed new location of the Exclusive Easement Area (the "**Relocation Site**") and subject to obtaining all required and necessary approvals. Grantee shall have the right to approve the Relocation Site, which approval must be in writing to be effective and which shall not be unreasonably withheld, conditioned or delayed. Furthermore, Grantee, shall have the right to deny approval of any proposed relocation if a Phase 1 environmental survey of the Exclusive Easement Area indicates a violation or potential violation of any local, state or federal environmental law or regulation in connection with, related to, and/or resulting from the proposed relocation of the Exclusive Easement Area. Notwithstanding the foregoing, Grantor hereby acknowledges and agrees that if, in Grantee's reasonable discretion, Grantee's intended use of the Exclusive Easement Area will be negatively impacted by any such relocation, Grantee's rejection of such Relocation Site shall be deemed to be reasonable by the parties. In the event Grantor elects to relocate the Exclusive Easement Area, such alternate location shall provide access to the Exclusive Easement Area of the same or similar availability as exists on the date hereof. Grantor agrees that such relocation will not interrupt Grantee's intended use, including but

not limited to access to the site 24 hours a day 7 days a week. If Grantor or Grantee files an action for the enforcement or breach of this paragraph, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs.

8. Right to Control Premises. Grantee acknowledges that Grantor retains its authority to convey or lease any interest in portions of the Premises outside the Exclusive Easement Area that do not interfere with, disturb, limit, or impair Grantee's Permitted Use of the Easement Areas. This includes, but is not limited to, Grantor's authority to grant site leases to tenants that operate communications facilities on other portions of the Premises and that may be considered third-party competitors of Grantee. Grantor hereby states and Grantee acknowledges that T-Mobile West LLC holds a current communications site lease for a portion of the Premises outside the Exclusive Easement Area.

9. Assignment. Grantee may assign this Agreement, in whole or in part, to an Affiliate (as defined below) of Grantee at any time without the prior written consent or approval of, or notice to, Grantor. Any other assignment shall be subject to Grantor's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned upon the payment of additional consideration. The parties further agree that it shall be unreasonable for Grantor to withhold consent for any assignment to a person or entity with sufficient financial strength to fulfil the obligations on Grantee hereunder. For the purposes of this Agreement, "Affiliate" means any corporation, partnership, limited liability company, or other entity that, directly or indirectly, controls, is controlled by, or is under common control with Grantee or with the parent company or any subsidiaries of Grantee. For purposes of the aforementioned definition, the terms "controls," "controlled by," and "under common control with" mean: (i) the right to direct the management and policies of the applicable entity or entities, whether directly or indirectly, or (ii) the ownership of more than 50% of the stock, partnership, membership, or other equity interests of and in the applicable entity or entities. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all of its obligations, duties and liabilities hereunder.

10. Covenants; Representations; Warranties.

a. Grantor hereby represents and warrants to Grantee the following: (i) Grantor is the owner in fee simple of the Easement Areas, free and clear of all liens and encumbrances; (ii) Grantor has the full authority and power to enter into and perform its obligations under this Agreement, and, to the extent applicable, the person or persons executing this Agreement on behalf of Grantor have the authority to enter into and deliver this Agreement on behalf of Grantor; (iii) to the best of Grantor's knowledge, there is no condemnation proceeding pending or threatened against all or any portion of the Premises; (iv) no claim, litigation, proceeding, or investigation is pending or, to the best of Grantor's knowledge, threatened against Grantor or all or any portion of the Premises that could affect Grantee's use of the Easement Areas as contemplated herein; (v) Grantor has not filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors or suffered the



appointment of a receiver to take possession of substantially all of its assets; (vi) to the best of Grantor's knowledge, the Premises is in compliance with all applicable laws, ordinances and regulations, including those governing Hazardous Materials (as defined below); (vii) to the best of Grantor's knowledge, there is no proceeding pending or threatened to change the zoning status of the Premises; (viii) Grantor is not indebted to any party, including, without limitation, any local or state or the federal government for which a lien or claim of lien has been or could be asserted against the all or any portion of the Premises; (ix) there are no leases, written or oral, affecting all or any portion of the Easement Areas, except for any agreements entered into between Grantee or its affiliates and third parties and/or the Current Agreement(s) (as defined below); (x) the Easement Areas do not constitute or form a part of Grantor's homestead, or, in the event that the Easement Areas are located upon homestead property, then Grantor's spouse (if applicable) shall join in the execution of this Agreement; (xi) Grantor has paid all taxes, assessments, charges, fees, levies, impositions and other amounts relating to the Premises due and payable prior to the Effective Date; and (xii) Grantee shall peaceably and quietly hold, exercise, and enjoy the Easements during the Term without any hindrance, molestation or ejection by any party whomsoever.

b. During the Term, Grantor shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Premises, including the Easement Areas, if any. Grantee hereby agrees to reimburse Grantor for any personal property taxes in addition to any increase in real property taxes levied against the Premises, to the extent both are directly attributable to Grantee's improvements on the Easements (but not, however, taxes or other assessments attributable to periods prior to the date of this Agreement), provided, however, that Grantor must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Grantee) of such personal property taxes or real property tax increase to Grantee along with proof of payment of same by Grantor. Anything to the contrary notwithstanding, Grantee shall not be obligated to reimburse Grantor for any applicable taxes unless Grantor requests such reimbursement within one (1) year after the date such taxes became due. Grantor shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Grantee from time to time. Subject to the requirements set forth in this Section, Grantee shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Grantor. Grantee shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Grantee. If Grantor fails to pay when due any taxes affecting the Premises as required herein, Grantee shall have the right, but not the obligation, to pay such taxes on Grantor's behalf and: (i) deduct the full amount of any such taxes paid by Grantee on Grantor's behalf from any future payments required to be made by Grantee to Grantor hereunder; (ii) and demand reimbursement from Grantor, which reimbursement payment Grantor shall make within ten (10) days of such demand by Grantee; and/or (iii) collect from Grantor any such tax payments made by Grantee on Grantor's behalf by any

lawful means.

c. Without Grantee's prior written consent, which consent may be withheld or conditioned in Grantee's sole and absolute discretion, Grantor shall not (i) cause any portion of the Easement Areas to be legally or otherwise subdivided from any master tract of which it is currently a part, or (ii) cause any portion of the Easement Areas to be separately assessed for tax purposes.

d. Grantor shall not suffer, grant, create, transfer, or convey (or cause to be suffered, granted, created, transferred, or conveyed) any claim, lien, encumbrance, easement, interest, restriction or other charge or exception to title to the Easement Areas or any other portion of the Premises that would adversely affect Grantee's use of the Easement Areas as contemplated herein.

e. Grantor shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Premises in violation of any Environmental Laws (as defined below). As used herein, "**Hazardous Materials**" shall mean any: contaminants, oils, asbestos, PCBs, hazardous substances, or wastes as defined by federal, state, or local environmental laws, regulations, or administrative orders or other materials the removal of which are required or the maintenance of which are prohibited or regulated by any federal, state, or local governmental authorities having jurisdiction over all or any portion of the Premises. As used herein, "**Environmental Laws**" shall mean any laws, regulations, ordinances, and/or administrative orders applicable to all or any portion of the Premises, which govern Hazardous Materials.

f. Grantee shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Easement Areas in violation of any Environmental Laws.

g. Grantor hereby agrees to and does indemnify and shall defend and hold harmless Grantee and its officers, directors, shareholders, agents, contractors, and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor of any representation, warranty or covenant of Grantor contained herein. Grantee hereby agrees to and does indemnify and shall defend and hold harmless Grantor and its agents, contractors, and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantee of any representation, warranty or covenant of Grantee contained herein

h. The representations, warranties, covenants, agreements, and indemnities contained in this section shall survive the execution and delivery of this Agreement indefinitely.

11. Non-Disturbance. During the Term, Grantor will not improve or alter the Premises in a manner that would interfere with, disturb, limit, or impair Grantee's Permitted Use of the Easement Areas. During the Term, Grantor will not grant, convey, transfer, or otherwise enter into any other easement, ground lease, lease, license, or similar agreement or contract that

would interfere with, disturb, limit, or impair Grantee's Permitted Use of the Easement Areas. Grantor hereby acknowledges that Grantee and the Permitted Parties are currently utilizing the Exclusive Easement Area for the purpose of transmitting and receiving communication signals, including, but not limited to, wireless telecommunications signals. Grantor and Grantee recognize and acknowledge that Grantee's use of the Easement Areas set forth in this Agreement would be materially frustrated if the communications signals were blocked or otherwise interfered with, or if access and/or utilities to and from the Exclusive Easement Area were inhibited, even if temporarily. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing and shall promptly undertake any remedial action necessary to comply with the terms and provisions of this Section. Grantee shall have the express right, among others, to seek an injunction to prevent any of the activities prohibited by this Section.

12. Grantee's Securitization Rights; Estoppel. Grantor hereby consents to the granting by Grantee of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "**Security Interest**") in Grantee's interest in this Agreement and all of Grantee's property and fixtures attached to and lying within the Exclusive Easement Area and further consents to the exercise by Grantee's mortgagee ("**Grantee's Mortgagee**") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Grantor shall recognize the holder of any such Security Interest of which Grantor is given prior written notice (any such holder, a "**Holder**") as "Grantee" hereunder in the event a Holder succeeds to the interest of Grantee hereunder by the exercise of such remedies. Grantor further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Grantee or Holder.

13. Notices. Except where telephonic notice is explicitly allowed, all notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth below:

To Grantee: ATC Sequoia LLC  
c/o American Tower  
10 Presidential Way  
Woburn, MA 01801

To Grantor: Pima County Parks Dept.  
3500 W. River Road  
Tucson, AZ 85741

With copy to: ATC Sequoia LLC  
c/o American Tower  
116 Huntington Avenue  
Boston, MA 02116  
Attn: Telecom Contracts Administrator  
Attn: Legal Department

With copy to: Pima County Real Property  
201 N. Stone Avenue, 6<sup>th</sup> Floor  
Tucson, AZ 85701



Grantor or Grantee, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

14. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall automatically be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

15. Miscellaneous. This Agreement shall be recorded at the sole expense of Grantee and shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth. The captions and headings herein are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions, scope or intent of this Agreement. This Agreement and any other documents executed in connection herewith, constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressly set forth herein. Grantee has not provided any legal or tax advice to Grantor in connection with the execution of this Agreement. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement that is signed by each of the parties hereto.

16. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee in this Agreement, or in any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantor or Grantee.

17. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though Grantor and Grantee are not signatories to the original or the same counterpart.

18. Severability. Should any part or provision of this Agreement be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or provision shall not invalidate the remaining portions of the Agreement, and they shall remain in full force and effect and this Agreement shall be construed as if such part or provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any

laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the parties shall execute a reasonably acceptable ground lease between Grantor, as landlord, and Grantee, as tenant (with the Exclusive Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth herein. The parties agree that no additional consideration shall be paid to Grantor for entering into such a lease and said lease must (a) expressly provide that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the leased premises or to permit sublessees or licensees to utilize the non-exclusive easement for access and utilities, (b) be for a term of fifty (50) years, or as long as permitted by applicable law.

19. Attorney's Fees. If there is any legal action or proceeding between Grantor and Grantee arising from or based on this Agreement, the non-prevailing party to such action or proceeding shall pay to the prevailing party all court awarded costs and expenses, including reasonable attorney's fees and disbursements, actually incurred by such prevailing party in connection with such proceeding and in any appeal in related thereto. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

20. Government Approvals/Applications. Grantor hereby covenants and agrees that (a) neither Grantor nor any affiliate of Grantor shall at any time oppose in any manner (whether at a formal hearing, in written documentation, or otherwise) any zoning, land use or building permit application of Grantee for use of the Easement Areas as permitted by this Agreement and (b) Grantor shall promptly cooperate with Grantee in making application for and/or otherwise obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's intended use of the Easement Areas.

21. Assignment of Ground Lease. Grantor hereby assigns to Grantee all of Grantor's beneficial rights, title and interest in, to and under all of the existing leases, licenses and other agreements for use or occupancy of the Easements, including, but not limited to, those agreements listed on **Exhibit "D"** attached hereto (the "**Current Agreement**"), including without limitation, the right to receive any and all rents and other monies payable to Grantor thereunder and including during any and all extensions thereof ("**Contract Revenues**"). Grantor hereby represents and warrants that as of the Effective Date there are no leases, license or other agreements pertaining to the Premises other than the Current Agreement. Notwithstanding the foregoing assignment to Grantee, Grantor agrees that Grantor remains the fee owner of the Premises and Grantor remains obligated to comply with all obligations of the lessor or Grantor under the Current Agreement(s), as the same may be extended or renewed, which relate to the ownership, maintenance, operation and use of the Premises. Such

obligations are hereby expressly excluded from the foregoing assignment. Grantor hereby acknowledges that as of the Effective Date none of the improvements located at the Site pursuant to the Current Agreement(s) encroach outside the Premises. Grantor hereby certifies to Grantee that to the best of Grantor's knowledge the Current Agreement(s) are in full force and effect, that Grantor is not in default or breach of any of its obligations under the Current Agreement(s), that Grantor has received no notices alleging a default under the Current Agreement(s), and that as of the date hereof the lessee under the Current Agreement(s) has no claim against Grantor. Grantor agrees to indemnify and hold Grantee harmless from and against all loss, cost, damage, and expense, including, without limitation, reasonable attorney fees, arising out of any act, omission, or default by Grantor under the Current Agreement(s) that occurred prior to the Effective Date.

22. Further Acts; Attorney-In-Fact. Grantor, at Grantee's sole cost and expense, shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easements and to take such action as Grantee may be reasonably required to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee as Grantor attorney-in-fact coupled with an interest to prepare, execute, deliver, and submit land-use, building permit and zoning applications related to Grantee's permitted use of the Easement Areas, on behalf of Grantor, to federal, state and local governmental authorities.

23. Survey. Grantee may elect, at Grantee's expense, to cause a boundary, as-built or similar survey of all or any portion of the Easement Areas (the "**Survey**") to be prepared by a surveyor duly licensed under the laws of the state in which the Premises is located. Grantor further agrees that Grantee may elect, with Grantor's prior written approval after review and approval of the revised survey(s) by County's Chief Surveyor, to replace Exhibit B and Exhibit C with a revised Exhibit B and Exhibit C depicting and/or describing the Exclusive Easement Area and Access and Utility Easement Area, as applicable, in accordance with the Survey prepared at Grantee's election.

24. Waiver. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL GRANTOR OR GRANTEE BE LIABLE TO THE OTHER FOR, AND GRANTOR AND GRANTEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OR BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY, AND SIMILAR DAMAGES.

25. Condemnation. In the event Grantor receives notification of any condemnation proceeding affecting the Easement Areas, or any portion thereof, Grantor shall provide notice of the proceeding to Grantee within forty-eight (48) hours. If a condemning authority takes all of the Easement Areas, or any portion thereof, Grantee shall be entitled to pursue Grantee's own award in the condemnation proceeds, which for Grantee will include, where applicable,

[END OF DOCUMENT – SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

Site Name: AZTU\_Mall AZ

**GRANTEE:**

**2 WITNESSES**

**ATC Sequoia, LLC,**

a Delaware limited liability company

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

**WITNESS AND ACKNOWLEDGEMENT**

Commonwealth of Massachusetts

County of Middlesex

On this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

{Seal}

**Attachments to Easement:**

Exhibit "A" – Premises

Exhibit "B" – Exclusive Easement Area

Exhibit "C" – Access and Utility Easement Area

Exhibit "D" – Current Agreement(s)

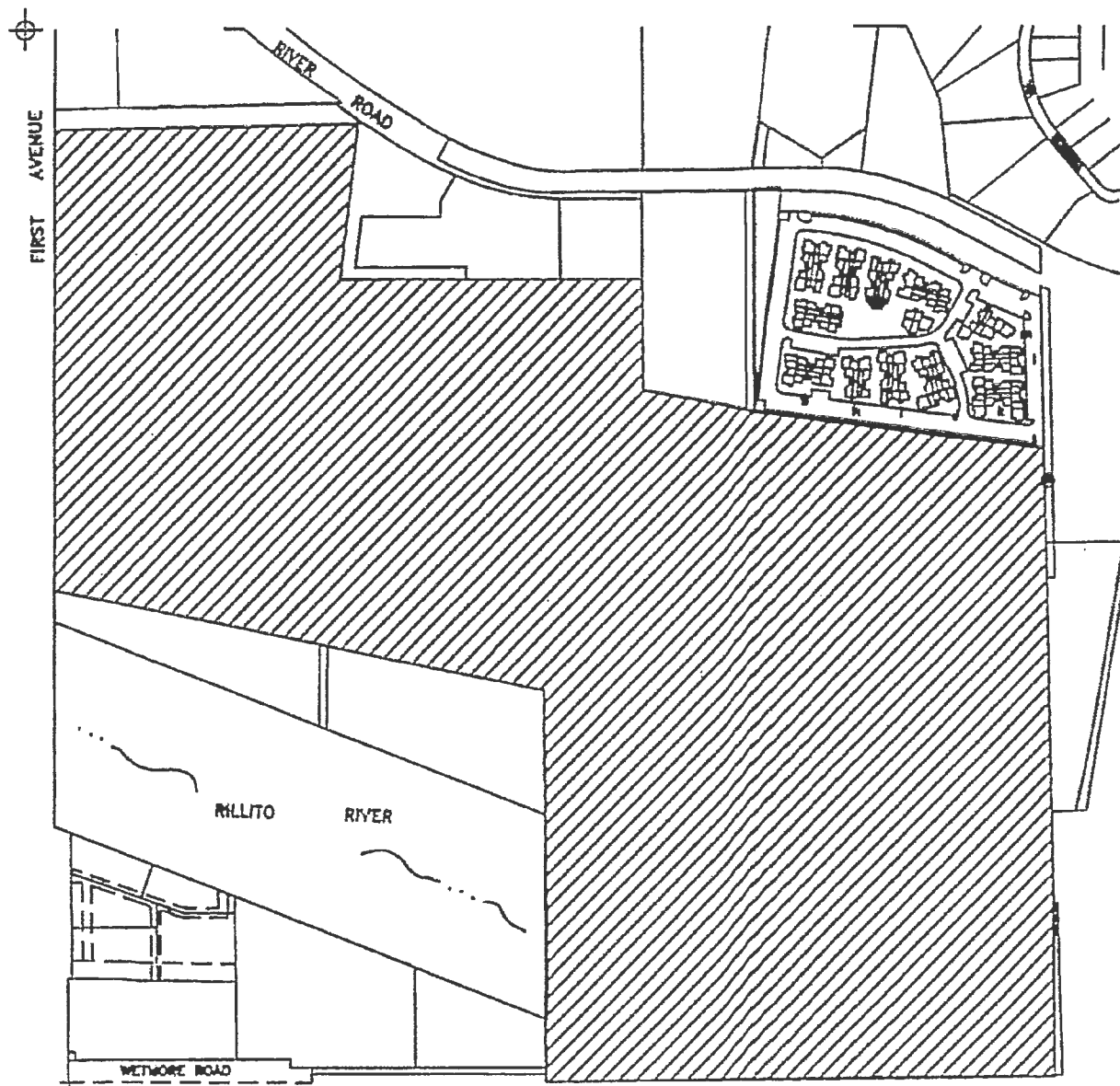
## **EXHIBIT "B"**

### **Premises**

Being that property conveyed to Pima County by Gift Deed, dated December 17, 1971, and recorded December 22, 1971, in Book 4148, Page 513, and being known as Pima County, Arizona parcel: 108-19-004A.

SECTION 19  
TOWNSHIP 13 SOUTH  
RANGE 14 EAST  
NE 1/4

 SUBJECT PROPERTY



PIMA COUNTY DEPARTMENT OF TRANSPORTATION  
TECHNICAL SERVICES DIVISION

DRAWING NOT TO SCALE

DRAWN BY: B. R. KISSEL

DATE: 02/17/98

Exhibit "B" (continued)



## EXHIBIT "C"

### **Exclusive Easement Area**

#### Tract 1:

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 13 SOUTH, RANGE 14 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BRASS CAP IN HANDHOLE, SAID POINT BEING THE WEST QUARTER CORNER OF SAID SECTION 19; THENCE NORTH 00 DEGREES 38 MINUTES 01 SECONDS WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 824.10 FEET; THENCE NORTH 89 DEGREES 24 MINUTES 59 SECONDS EAST, A DISTANCE OF 1635.50 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 83 DEGREES 55 MINUTES 16 SECONDS EAST, A DISTANCE OF 84.18 FEET;

THENCE SOUTH 55 DEGREES 03 MINUTES 46 SECONDS EAST, A DISTANCE OF 15.85 FEET;

THENCE SOUTH 42 DEGREES 02 MINUTES 48 SECONDS WEST, A DISTANCE OF 10.60 FEET TO A POINT HEREIN REFERRED TO AS POINT A;

THENCE NORTH 54 DEGREES 27 MINUTES 49 SECONDS WEST, A DISTANCE OF 12.08 FEET;

THENCE SOUTH 42 DEGREES 02 MINUTES 48 SECONDS WEST, A DISTANCE OF 26.01 FEET;

THENCE NORTH 49 DEGREES 40 MINUTES 39 SECONDS WEST, A DISTANCE OF 55.69 FEET TO THE POINT OF BEGINNING. CONTAINING 1,200.00 SQUARE FEET OR 0.028 ACRES, MORE OR LESS.

#### Tract 2:

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 13 SOUTH, RANGE 14 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BRASS CAP IN HANDHOLE, SAID POINT BEING THE WEST QUARTER CORNER OF SAID SECTION 19; THENCE NORTH 00 DEGREES 38 MINUTES 01 SECONDS WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 824.10 FEET; THENCE NORTH 89 DEGREES 24 MINUTES 59 SECONDS EAST, A DISTANCE OF 1659.12 FEET; THENCE SOUTH 83 DEGREES 58 MINUTES 34 SECONDS EAST, A DISTANCE OF 40.00 FEET; THENCE CONTINUING, SOUTH 83 DEGREES 58 MINUTES 34 SECONDS EAST, A DISTANCE OF 16.84 FEET TO THE POINT OF BEGINNING;

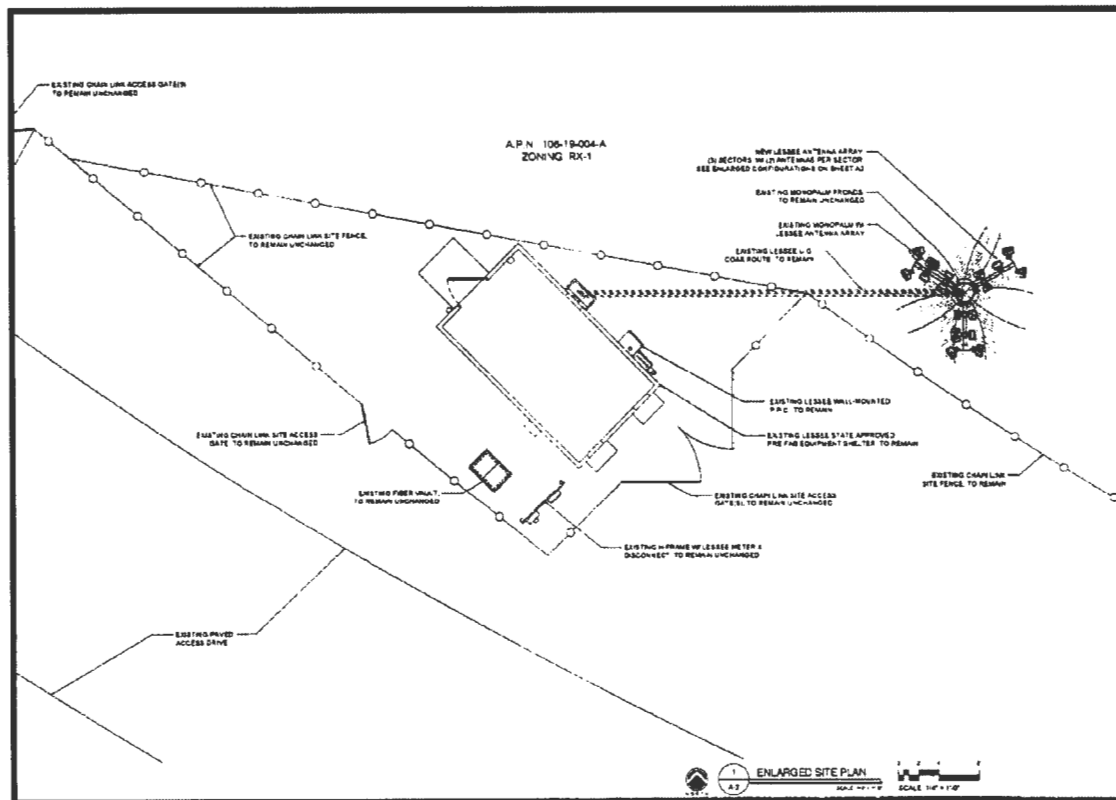
THENCE CONTINUING, SOUTH 83 DEGREES 58 MINUTES 34 SECONDS EAST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 06 DEGREES 01 MINUTES 26 SECONDS WEST, A DISTANCE OF 10.00 FEET;

THENCE NORTH 83 DEGREES 58 MINUTES 34 SECONDS WEST, A DISTANCE OF 10.00 FEET;

THENCE NORTH 06 DEGREES 01 MINUTES 26 SECONDS EAST, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

RILLITO RACETRACK  
CELL TOWER EASEMENT



## **EXHIBIT "D"**

### **Access and Utility Easement Area**

All existing utility and access easements from Exclusive Easement Area to a public right of way, including but not limited to:

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 13 SOUTH, RANGE 14 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PIMA COUNTY, ARIZONA, BEING A 12.00 FOOT WIDE ACCESS EASEMENT LYING 12.00 FEET NORTHERLY OF THE FOLLOWING DESCRIBED LINE.

COMMENCING AT SAID POINT A, THENCE SOUTH 42°02'48" WEST, 39.02 FEET; THENCE NORTH 49°40'39" WEST, 36.51 FEET, THENCE NORTH 83°58'34" WEST, 35.24 FEET; THENCE NORTH 51°33'58" WEST, 339.95 FEET, THENCE NORTH 80°55'44" WEST, 1325.58 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF 1ST AVENUE AND THE POINT OF TERMINUS. CONTAINING 21,216.21 SQUARE FEET OR 0.487 ACRES, MORE OR LESS

Together with an easement for utilities, to, from, and between the above-described tracts of the Exclusive Easement Area.